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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE COMMUNICATIONS ACT OF 1996	DOCKET NO. T-00000A-97-0238 **NOTICE OF FILING**

Staff of the Arizona Corporation Commission ("Staff") through its undersigned Attorney hereby files its Proposed Findings of Fact and Conclusions of Law on Qwest's compliance with Line Splitting and Network Interface Device (NID) requirements.

RESPECTFULLY SUBMITTED this 26th day of November, 2001

Arizona Corporation Commission
DOCKETED

NOV 26 2001

DOCKETED BY

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IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON QWEST'S COMPLIANCE

With

LINE SPLITTING

and

NETWORK INTERFACE DEVICES (NIDs)

REQUIREMENTS

NOVEMBER 26, 2001

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On March 5, 2001, the first Workshop on Line Splitting and Network Interface Devices (NIDs) took place at Hewlett-Packard's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation[1], AT&T, MCI WorldCom, Sprint, Covad, Communications Workers of America and the Residential Utility Consumer Office ("RUCO"). Qwest relied upon its Supplemental Affidavit filed on *July 21, 2000.* Qwest filed a second supplemental affidavit on UNE-P Combinations "Line Splitting" on September 21, 2000. Additional Comments were filed on November 3, 2000 by AT&T and WorldCom. Covad filed initial comments on March 2, 2001. Qwest filed Rebuttal Comments on Line Splitting and NIDs on October 6, 2000 and February 19, 2001.

2. On May 14, 2001, a second follow-up workshop was conducted discussing remaining issues regarding Loops.

3. The Parties resolved many issues at the two Workshops held on March 5, 2001, and May 14, 2001. Outstanding issues from the March 5, 2001 Workshop included a commitments by the parties to address take back issues for resolution at the follow-up workshops held on May 14, 2001. At the conclusion of the May 14, 2001 workshop, a number of issues remained to be resolved.

B. DISCUSSION

1. Line Splitting and NIDs

a. FCC Requirements

1. Line Splitting

4. In its Order granting SBC's Section 271 application for Texas, the FCC defined "line splitting" as the provision of both voice and data service by competitive carriers over a single loop. The FCC requires the ILEC to allow the CLEC to provide high speed data service on lines where the CLEC is providing service using UNE-P:

> [I]ncumbent LECs *have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter.* The record reflects that SWBT allows competing carriers to

[1] As of the date of this Report, U S WEST Communications, Inc. has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S WES T have been changed to Qwest.

> provide both voice and data services over the UNE-P. For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and unbundled switching combined with shared transport to replace its UNE-P configuration with a configuration that allows provisioning of both data and voice service. SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.

Id. at p. 2-3.

2. Network Interface Device ("NID")

5. The FCC, in its *UNE Remand Order*, added the NID to the list of UNEs that must be provided to CLECs on an unbundled basis pursuant to section 251(d)(2) of the Act. Revised Rule 51.319, in relevant part states:

> (b) *Network Interface Device*. An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the network interface device on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. The network interface device network element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.

6. The FCC also, in the *UNE Remand Order*, redefined the NID to " include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." It went on to state that:

> We conclude that the NID definition, for the purposes of our unbundling analysis, should be flexible and technology-neutral. The Commission's rules permit considerable variation in the interconnection facilities between carrier and customer-controlled facilities. Furthermore, evolution in network design and technology will likely cause additional design variations among the hardware interfaces between carrier and customer premises facilities. Accordingly, we define the NID broadly to ensure that

> competitors will be able to obtain access to any of these facilities as an unbundled network element. Our intention is to ensure that the NID definition will apply to new technologies, as well as current technologies, and to ensure that competitors will continue to be able to access customer premises facilities as an unbundled network element, as long as that access is required pursuant to section 251(d)(2) standards.

b. Background

1. Line Splitting

7. As discussed above, "line splitting" is the provision of both voice and data service by competitive carriers over a single loop. "Line Splitting" is not the same as "line sharing", which occurs when the ILEC provides the voice service and another CLEC provides the data service. As defined by the FCC, Qwest's obligation, in regards to line splitting on a UNE-P line, is to allow competing carriers the opportunity to cooperatively provide voice and data services on a single unbundled loop that is part of a UNE-P combination.

2. NIDs

8. The Network Interface Device ("NID") is located at the customer's premises and represents the juncture of an exchange carrier's loop and an end user's inside wiring. 5-Qwest-2 at p. 119. The NID serves as both a demarcation point and as protection against voltage surges caused by lightning and inadvertent contact between commercial power cable and telephone cable. Id. at p. 119-120.

9. The FCC, per the First Interconnection Order § 392, requires ILECs, such as Qwest, to provide access to the NID:

> We require incumbent LECs to offer unbundled access to the network interface device (NID), as a network element, as described below. When a competitor deploys its own loops, the competitor must be able to connect its loops to customers' inside wiring in order to provide competing service, especially in multi-tenant buildings. In many cases, inside wiring is connected to the incumbent LEC's loop plant at the NID. In order to provide service, a competitor must have access to this facility. Therefore, we conclude that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC's NID.

Id. at p. 120.

c. Position of Qwest

1. Line Splitting

10. On September 21, 2000, Qwest witness Karen Stewart provided her Second Supplemental Testimony stating that Qwest will permit competing carriers to provide voice and data services over a single UNE-P loop. 5-Qwest-4 at p. 3. Qwest stands ready to amend a CLEC's interconnection agreement, on an expedited basis, to add UNE-P line splitting to a new or existing UNE-P provision. Id.

11. Line splitting provides CLECs with the opportunity to offer an advanced data service simultaneously with an existing UNE-P-POTS combination (UNE-Platform-Plain Old Telephone Service) using the frequency range above the voice band of a copper loop. 5-Qwest-4 at p. 3. The advanced data service may be provided by the CLEC, or another data service provider (DLEC) in cooperation with the CLEC. Id. The DLEC may provide any xDSL (i.e., ADSL, RADSL, G.lite and Multiple Virtual Line transmission systems) service that is compatible with the CLEC UNE-P POTS service. Id. at p. 4. In the future, additional services may be used by DLEC to the extent those services are deemed acceptable for UNE-P line splitting deployment under applicable FCC rules. Id.

12. Prior to the actual provisioning of a CLEC's first UNE-P line splitting order in a central office, a POTS splitter must have been provisioned in that central office. 5-Qwest-4 at p. 4. The placement of a POTS splitter for line splitting is the same process as placing a POTS splitter in a Qwest central office for line sharing. Id. The POTS splitter separates the voice and data traffic and allows the copper loop to be used for simultaneous DLEC data transmission and CLEC- provided voice service to the end user. Id. The CLEC and DLEC may be the same entity. Id. The POTS splitter must then be inserted into the UNE-P combination by the use of central- office- based Interconnection Tie Pairs (ITPs) and pre-wired TIE Cables. Id. at p. 4-5. Typically, one ITP carries both voice and data traffic from the COSMIC/MDF loop termination to an appropriate Intermediate Distribution Frame (IDF). Id. From this frame, one TIE Cable carries both voice and data traffic to the POTS splitter. Id. The voice and data traffic are then separated at the POTS splitter, and the separated voice and data traffic are transported to the IDF via separate TIE Cables. Id. At the IDF, the data traffic is routed to the CLEC's collocation area via a fourth TIE Cable, and the voice traffic is transported to the switch port termination, via a second ITP. Id. A CLEC could also elect to use a direct connection from its collocated POTS splitter to the COSMIC/MDF loop termination. Id. During the placement of the POTS splitter, the CLEC will determine the ITP and pre-wired TIE Cable arrangements that best meets its needs. Id.

13. Once a POTS splitter has been installed in a central office, Qwest will provision the line splitting arrangement on an existing UNE-P POTS line within the same standard interval as the unbundled loop. 5-Qwest-4 at p. 6. Basic installation "lift and lay" procedures will be used for all UNE-P-POTS line splitting orders. Id. Permanent rates for UNE-P line splitting will be established in the Arizona cost docket. Id. at p. 7.

14. Qwest will maintain UNE-P line splitting arrangements in Arizona utilizing defined procedural flows. 5-Qwest-4 at p. 7. The CLEC/DLEC will be responsible for reporting to Qwest any voice service troubles provided over UNE-P line splitting. Id. Qwest will be responsible for repairing troubles on the physical line between the network interface device at the user premises and the point of demarcation in Qwest Wire Centers. Id. The CLEC/DLEC will be responsible for repairing data services provided on UNE-P Line Splitting. Qwest, the CLEC and the DLEC each will be responsible for maintaining their its own equipment. Id. The entity that controls the POTS splitter will be responsible for its maintenance. Id. If an end user complains of a voice service problem that may be related to the use of an UNE-P for data services, Qwest and the CLEC/DLEC will work together with the end user to solve the problem to the satisfaction of the end user. Id. at p. 7-8. Qwest will not disconnect the data service without authorization from the CLEC/DLEC. Id.

2. NIDs

15. Qwest provides unbundled access to the NID. 5-Qwest-2 at p. 120. Qwest allows competitors to connect their loops to a retail customer's inside wiring either via their own NID or the Qwest NID. Id. CLECs can terminate their loop in the Qwest NID so long as there is space for the connection. Id. SGAT Section 9.5 also gives the CLEC the option to order a modular NID to replace an existing non-modular NID for ease in testing or to cooperate in reconfiguration necessary to create a Single Point of Interface. Id.

16. The evidence is indisputable that Qwest makes NIDs available at an acceptable level of quality. 5-Qwest-2 at p. 120. As of April 31, 2000, Qwest had provisioned 9,033 unbundled loops in Arizona, each with a NID. Id. In each instance, competitors did not get a NID of similar quality, but the exact same NID. Qwest, therefore, makes NIDs available to CLECs as required by the Act. Id. at p. 121.

d. Competitors' Position

17. AT&T and MCIW filed initial comments on Line Splitting and NIDs on November 3, 2000. Covad filed initial comments on Line Splitting on March 2, 2001.

1. Line Splitting

18. AT&T originally addressed its issues relative to line splitting in its comments filed in the Emerging Services Workshop on filed on August 21, 2000 and its supplemental comments filed in the Emerging Services Workshop on September 29, 2000.

19. In its original comments filed on August 21, 2000, AT&T stated that Qwest made no provision to allow CLECs providing voice service using unbundled elements, specifically UNE-P, to also offer high speed data service on the same loop.

AT&T 3-1 at p. 22. The Commission should require Qwest to own and deploy splitters and make them available on a line-at-a-time basis. Id. at p. 23.

20. AT&T stated that although Qwest has not definitively refused to provide access to the HFS of the loop, it has refused to own splitters and provide access to them on a line-at-a-time basis. AT&T 3-1 at p. 23. The practical implication of Qwest's current refusal to perform technically feasible line splitting is that for each passing day that UNE-P based voice CLECs lack the capability to access the high frequency spectrum (HFS) portion of their loops, Qwest is further able to lock-up its base of local voice customers and increase the likelihood that customers who want xDSL services will have no choice but to remain with Qwest or to abandon their CLEC-provided local voice service and return to Qwest for such service. Id. at p. 24. Absent a Commission decision on this issue, only Qwest will be able to offer a complete package of local, toll and Internet access services over a single line. Id.

21. There is no question that it is technically feasible to deploy a splitter to create two derived loops. AT&T 3-1 at p. 26. The architecture involved in providing access to the HFS of the loop to voice CLECs using UNE-P (i.e., line splitting) involves essentially the same architecture that Qwest uses today to line share with its data affiliate or data CLEC. Id. The work involved in inserting a splitter and the functions the splitter performs are the same regardless of whether the splitter is used to provide line sharing or line splitting. Id. The only question that remains is whether Qwest should be restricted to own or provide splitters on a line-at-a-time basis or be allowed to restrict itself to the Line Sharing options where Qwest retains control of the voice portion of the loop. Id.

22. AT&T went on to state that the line-at-a-time splitter arrangement is highly preferable to the shelf-at-a-time wiring configuration involved in line sharing using splitters in common collocations for numerous reasons. AT&T 3-1 at p. 29. Significantly, the line-at-a-time arrangement effectively assigns the splitter to the outside plant facility, rather than being dedicated to a single CLEC. Id. As a result, CLECs share a splitter owned by Qwest, and voice service remains intact when the data provider is changed. Id.

23. The line-at-a-time approach also yields benefits when a customer subsequently terminates individual services. AT&T 3-1 at p. 30. If the customer terminates its data service, but not its voice service , Qwest can remove only the cross-connection from the splitter data output to the data CLEC's network's appearance on the frame, which cross-connects the data loop to the data provider's collocation. Id. In such a situation, the customer does not lose voice service whereas if the CLEC owned the splitter, the customer would have to be disconnected from the voice switch when the data provider ceases to perform the splitting function. Id. Qwest should be required to provide line-at-a-time option to CLECs. Id. at p. 31.

24. AT&T also stated that the efficient and non-disruptive ability to change DSL providers is a critical consideration for UNE-P CLECs providing data service via some form of a commercial arrangement with a data CLEC rather than through its own

data facilities, as well as for ISPs. AT&T 3-1 at p. 31. It also permits the UNE-P CLEC or ISP provider (depending on who has the relationship with the date CLEC) to control better the costs charged by and quality of service provided by its commercial data partner. Id.

25. Qwest should not be permitted to offer only CLEC owned, shelf-at-a-time splitter deployment since delivery of splitters on a line-at-a-time basis offers CLECs a very efficient and cost effective option that is technically feasible and highly conducive to the development of competition. AT&T 3-1 at p. 32.

26. In its supplemental comments filed on September 29, 2000. AT&T stated that Qwest did concede that it is obligated to provide line splitting and agreed at the workshop to provide SGAT language delineating its obligations. AT&T's September 29, 2000 Comments at p. 1. However, the Qwest supplied information is insufficient for it to satisfy its legal obligations on this issue. Id. at p. 2.

27. AT&T commented as before, that Qwest continued to refuse to make splitters available on a line-at-a-time basis even though there is no legitimate technical or operational justification for such refusal. AT&T's September 29, 2000 Comments at p. 2. Qwest can only fulfill its legal obligation to provide access to all of the features, functionalities and capabilities of the loop if it owns and deploys the splitter. Id. at p. 5.

28. Additionally, AT&T stated that access to Qwest owned splitters on a line-at-a-time basis also yields benefits when a customer terminates individual services, allows for efficient usage of splitters and racks within central offices where space is already scarce, and promotes competition among data CLECs because voice providers and ISPs encounter fewer barriers to switching from one provider to another. Id. at p. 6. Requiring Qwest to deploy splitters on a line-at-a-time basis also promotes the ability of CLECs to offer a bundle of voice and data service in competition with Qwest. Id.

29. Qwest should not be allowed to disconnect existing Megabit service for end-users who switch to a CLEC voice provider. AT&T's September 29, 2000 Comments at p. 8. Qwest has decided to terminate Megabit service if a customer switches local carriers and justifies this not with technical reasons but simply by stating that it is not required to do so based on the FCC's preliminary determination in the SWB Texas 271 proceeding. Id. AT&T claims this is a clear barrier to entry and is anticompetitive. Id.

30. Regarding Qwest's transition scenario matrix, AT&T insists that Qwest develop an enhanced transition matrix reflecting the transitions represented by AT&T's submitted list of additional transition scenarios. AT&T's September 29, 2000 Comments at p. 10. AT&T comments that Qwest refuses to include in its matrix any transition scenario in which a carrier other than Qwest provides voice services and Qwest provides its ADSL Megabit service. Id. Qwest must develop transition scenarios that involve these situations. Id. at p. 11. Qwest must also amend its SGAT to assure CLECs that data service would not be dropped in the event an end user transitions from Qwest as a

voice provider (and a CLEC as a data provider) to another CLEC as a voice provider. Id. Qwest must provide some general description of its intended, fully developed loss and completion report process since it is currently noted as "under development." Id. at p. 11-12.

31. Specifically, AT&T describes items 3 and 3a in the transition scenario matrix which describes situations in which an end user decides to transfer data service from the existing CLEC data provider. AT&T's September 29, 2000 Comments at p. 12. A complete and appropriate inquiry into these two processes would reveal whether Qwest is fulfilling its obligations to provide nondiscriminatory access. Id.

32. Item 8 describes a scenario in which an end user changes its phone number. AT&T's September 29, 2000 Comments at p. 12. AT&T believes that this arrangement creates a materially different obligation on DLECs that Qwest itself enjoys under similar circumstances. Id. Qwest should ensure that this procedure is congruent with the same procedures Qwest benefits from when an end user changes its phone number. Id.

33. Finally, item 11 describes a number of scenarios in which existing lines have load coils and the fact that it is unclear how Qwest's proposals here synchronize with its general obligations under the SGAT to condition loops or perform other work. AT&T's September 29, 2000 Comments at p. 12.

34. In its comments filed on November 3, 2000, MCIW stated that UNE-P is the only vehicle most CLECs have to offer voice services to residential and small business customers on a scale that will provide meaningful competition to the ILECs. 5-WCom-1 at p. 27. CLECs' ability to compete in the mass markets will be severely constrained if they are unable to also provision data services in a timely and cost effectively manner. Id.

35. MCIW went on to state that a Qwest furnished line splitter is the only way to allow HFPL access to be delivered in a UNE-P architecture in a manner that is efficient, timely, and minimally disruptive to the retail customer. 5-WCom-1 at p. 28. Without the option of an ILEC-furnished line splitter, a UNE-P provider would have to purchase or augment collocation space (or collocate in a common area), deploy its own splitter, and go through a provisioning process that is lengthy, cost prohibitive, and unduly disruptive to the customer. Id. at p. 28-29. Use of Qwest-owned splitters can eliminate unnecessary service lead times and can allow for more efficient use of resources and scarce central office and frame space, especially in the circumstance of an end user terminating service or migrating the xDSL service or voice service to another provider. Id. Failure by the ILECs to deploy line splitters effectively destroys the utility of UNE-P as a viable means of competing for residential customers who want advanced services. Id.

36. MCIW commented that while the FCC has not required ILECs to provide splitters, it requests that the Commission exercise its authority to require Qwest in this

proceeding to provide access to ILEC-owned splitters on a line-at-a-time basis. 5-WCom-1 at p. 29. MCIW stated that arbitrators for the Texas Public Utilities Commission recently ruled that SWBT "is required to provide the splitter in order to allow [the CLEC] to access the full functionality of the loop." Id. at p. 30. Qwest should be required to own splitters and make them available to CLECs on a line-at-a-time basis. Id. Qwest should not be permitted to offer only CLEC-owned splitter deployment options. Id. MCIW agrees with AT&T's regarding the highly preferable use of a Qwest-deployed, line-at-a-time splitter arrangement. Id.

37. MCIW also stated that the Commission should clarify that under no circumstance may the ILECs require voice CLECs to collocate in order to provide UNE-P line splitting since requiring a UNE-P CLEC to collocate defeats the purpose of UNE-P making it too costly to serve mass market customers. 5-WCom-1 at p. 31. Nor should the Commission permit the ILECs to unnecessarily break apart combinations of network elements for migrations from line sharing scenarios (ILEC voice and D-CLEC data or ILEC data) to UNE-P line splitting scenarios (UNE-P V-CLEC voice and D-CLEC data or ILEC data). Id. Only by requiring the ILECs to keep migrations as simple as possible, can the Commission keep the CLECs' cost of providing service at a reasonable level. Id. Also, the CLECs must be able to order the UNE-P line sharing arrangement as a platform offering and must not be required to order each unbundled network element individually in order for the customer who migrates to the UNE-P CLEC's voice service to retain its data service. Id. at p. 32. Finally, MCIW agrees with the other CLECs that the rate elements proposed by Qwest should be reviewed in the cost docket. Id.

38. Regarding Qwest's introductory description of Line Splitting, as stated in its proposed AZ SGAT attachment 9X, section 1.1 (Qwest KAS-1) entitled "Description", Line Splitting should be available as a service offering when a CLEC is ordering or modifying any UNE-P arrangement from Qwest, rather than being restricted to only current, or "existing" UNE-P customers of the CLEC. 5-WCom-1 at p. 32. MCIW recommends removal of the term "existing" from proposed Section 1.1, as follows:

> Line Splitting provides CLEC with the opportunity to offer advanced data service simultaneously with an existing UNE-P by using the frequency range above the voice band on the copper loop.

Id. at p. 33.

39. Section 1.2.1.1 should be modified as follows, to reflect inclusion of Qwest-deployed splitters as an option for CLECs:

> 1.2.1.1 The CLEC may order the insertion of a POTS splitter or the DLEC may order the insertion of a POTS splitter with an LOA from the CLEC, or the CLEC may order access to a splitter on a line-at-a-time basis from Qwest, and/or other equipment necessary for the end user to receive separate voice and data service across a single copper loop.

5-WCom-1 at p. 33.

40. MCIW stated that a Qwest-deployed splitter should be located as close as possible to the MDF so as to minimize quality of service and costing concerns. 5-WCom-1 at p. 34. Language in Line Splitting 1.2.1.6 should be modified to reflect this deployment option:

> 1.2.1.6 CLEC-owned and deployed POTS splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Shared Loop Section of this agreement. Under either option, POTS splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two points of termination. When ordered by a CLEC as such, ILEC-owned and deployed POTS splitters will be installed in a common area as close as possible to the Main Distributing Frame.

Id.

41. MCIW also stated that any forecasting requirements should be applicable to all of the services provided under the SGAT, without need for additional forecasting requirements specified elsewhere which may be unduly burdensome, either administratively or with regards to the disclosure of confidential or proprietary information, on the CLEC. 5-WCom-1 at p. 34-35. Line Splitting Section 1.2.1.7 should be modified as follows:

> 1.2.1.7 CLEC will provide Qwest with ~~non-binding, good faith, rolling quarterly~~ forecasts for UNE-P Line Splitting volumes in accordance with the forecasting requirements set forth in the Implementation Schedule Section of this Agreement ~~on a Wire Center by Wire Center basis. CLEC will also provide an eighteen (18) month, non-binding, good faith, quarterly forecast to Qwest in thirty (30) calendar days after the signing of this Agreement~~.

Id. at p. 35.

42. MCIW disagrees with a charge for loop conditioning associated with UNE-P. 5-WCom-1 at p. 35. There should be no charge for conditioning of loops under 18,000 feet and Section 1.3.2.2 should be revised. Id.

43. MCIW stated that only the CLEC or its authorized agent should be allowed to modify or add services to any specific UNE-P associated loop. 5-WCom-1 at p. 35. Line Splitting Section 1.4.1.1 should be revised. Id.

44. Finally, MCIW states that when it purchases a loop via UNE-P, it acquires rights to the entire loop, including the right to assign service and/or billing responsibilities for portions of the loop capable of providing advanced services to its agents. 5-WCom-1 at p. 36. Line Splitting Section 1.5.2 should be revised.

45. In its comments filed on March 2, 2001, Covad stated that its comments will address five specific areas: (1) Basic Requirements for Line Splitting, (2) Ordering Process, (3) Provisioning of Different Order Types, (4) Splitter Ownership, and (5) Implementation Schedule. 5-Covad-1 at p. 10-11.

46. Regarding basic requirements for line splitting, Qwest must be required to identify an xDSL capable loop and arrange for a Line and Station Transfer to move the existing voice service to the new loop, or remove load coils and bridged tap. 5-Covad-1 at p. 11. This must be done in a routine manner, without requiring additional orders from the CLEC and without any disruption to the end-user customer's service. Id. Covad would propose that this information be dependably provided through Qwest's pre-qualification tool. Id.

47. Regarding the ordering process, Covad states that Qwest must provide a single order process for the provisioning of line splitting, using a non-design, "flow through" order process. 5-Covad-1 at p. 12. Separate orders from both the voice provider and the data provider are not necessary and should not be required. Id. When the order is simply migrating an existing line sharing service, or the ILEC's combined voice and data service, to line splitting, there is no need for Loop Qualification to take place and this step should not be required. Id.

48. Regarding the provisioning of different order types, Covad stated that Qwest must take the steps necessary to provide for at least the following line splitting Order types: 1) Adding xDSL to an existing voice service, 2) Provisioning a new voice service with xDSL, 3) Migrating a Qwest voice customer to line splitting, 4) Migrating a Qwest voice and data customer to line splitting, 5) Migrating line sharing customer to line splitting, 6) Migrating a UNE data service to line splitting, 7) Changing data providers on a line splitting customer's line and 8) Changing voice providers on a line splitting customer's line. 5-Covad-1 at p. 12-13. All line splitting order activities listed above must be done with a single order and with no service disruption to the end-user customer. Id. Qwest must provision line splitting without requiring any more cross-connects or adding any additional tie cable length to the overall service than would be required for line sharing. Id. Covad supports a one business day interval for all line splitting orders. Id. An exception may be for migrating an existing loop to an xDSL capable loop by way of a Line and Station Transfer, or for removing load coils or excessive bridged tap. Id. For these unique situations, a five day interval would seem reasonable, as a dispatch would be required to transfer the customer's service to the new loop, or to de-condition the existing loop. Id. Covad is willing to accept a "phased" approach to line splitting, with provisioning intervals for orders not requiring a dispatch

starting at three days initially, declining to our recommended one day interval over a three month period starting from the effective date of the FCC's order. Id.

49. Regarding splitter ownership, Covad acknowledges that the FCC has declined to rule on this issue at this time. 5-Covad-1 at p. 14. However, Covad believes that Qwest-owned "outboard" splitters must be made available for use in line splitting. Id. "Outboard" refers to splitters which are stand alone devices and are not an internal part of a Digital Subscriber Line Access Multiplexer (DSLAM). Id. "Outboard" splitters must be made available where they are used by Qwest to provision its own combined voice and data services or to provide line sharing for xDSL providers. Id. By requiring Qwest to provide access to its "outboard" splitters, competition will be served by reducing the complexity of migrations among competitive carriers, and reducing the possibility of end user customer service interruption. Id.

50. Finally, regarding an implementation schedule, Covad believes that that implementation of line splitting should commence immediately, on a collaborative basis, including all CLECs wishing to become involved. 5-Covad-1 at p. 14. A much more aggressive implementation schedule is appropriate and Covad sees no reason why full implementation of line splitting should not be completed by July 1, 2001. Id.

2. NIDs

51. AT&T originally addressed its issues relative to NIDs in its comments filed on Unbundled Network Elements, Switching, Transport and Enhanced Extended Links filed on September 21, 2000.

52. In its original comments filed on September 29, 2000. AT&T stated that Qwest's SGAT Section 9.5 pertaining to NIDs and access to the NID is insufficient. AT&T 4-1 at p. 39. Section 9.5.1 defines the NID but as written, Qwest provides the NID under its SGAT *only* when a CLEC acquires an unbundled loop from Qwest. Id. Qwest's offer is clearly far short of the FCC's requirement that a NID be available on a stand-alone basis and Qwest must remove the first sentence of the definition. Id. Section 9.5.1 also does not provide access to all of the features of the NID in all cases but instead limits access to residential NIDs. Id. Qwest then restricts the NID to the inside wire terminals, unless there are spare protection modules on the existing NID. Id. Qwest's SGAT must be expanded to reflect the FCC's requirement. In addition, the FCC's definition encompasses "smart NIDs," which are devices used on PBX trunks and DS1 loops that give some maintenance monitoring for the loop. Id. Qwest must revise its SGAT accordingly and must also be expanded to make available the full features and functions of the NID, such as termination devices for ISDN loops. Id. Qwest's language should be changed to identify all types of NIDs, including those kinds of network terminating devices used in multiple dwelling unit or high-rise buildings or campuses to ensure that all network-terminating devices are included. Id. at p. 40. Further, Qwest must provide additional language that assures that all forms of network terminating devices are covered. Id. AT&T recommends its language be substituted for the language Qwest presently provides for Section 9.5.1. Id.

53. Section 9.5.2 requires the CLEC to install its own NID when the CLEC provides its own drop (loop distribution) which is not compliant with the FCC's UNE Remand Order. AT&T 4-1 at p. 41. The FCC specifically determined that it is unreasonable to require the CLEC to provide its own NID, stating that "[t]he record indicates that requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry, and materially limit the scope and quality of the competitor's service offerings" and required incumbent LECs to provide unbundled access to NIDs nationwide." Id. Qwest must remove this requirement in Section 9.5.2.1 and make its NIDs available in accordance with the FCC's requirements. Id.

54. Additionally, Section 9.5.1 only gives CLECs access to the NID if space is available on the existing NID. Id. at p. 41. This violates the FCC's *UNE Remand Order*. Id. Qwest is required to give CLECs access to its NID. Id. If space is unavailable, it appears that Qwest will deny access to the NID, instead requiring CLECs to install their own NID. Id. The *UNE Remand Order* mandates that Qwest remove its NID connections in order to give CLECs access to the NID. Id. Qwest must eliminate the restriction in Section 9.5.2.1 that CLECs can only access the NID if there is space available or if space can be made through Qwest accommodation. Id.

55. Section 9.5.1 also provides that CLECs access the NID only through cross-connections and that CLECs must "isolate the Qwest facility in the NID by unplugging the modular unit." AT&T 4-1 at p. 42. The Act and FCC rules require that CLECs be able to access NIDs at any technical feasible point and manner and as such, Qwest should amend this provision of the SGAT to provide for direct access. Id. In addition, AT&T proposes that the SGAT also be amended to specify the following kinds of access to the NID, in order to make Qwest's responsibilities clear:

> 9.5.2.1.1 Qwest shall allow CLEC to connect its loops directly to Qwest's multi-line NID enclosures that have additional space and are not used by Qwest or any other Telecommunications Carrier to provide service to the premise. CLEC agrees to pay for use of the Qwest NID in accordance with the schedules set forth in Part X (Pricing) of this Agreement.
>
> 9.5.2.1.2 Qwest shall allow CLEC to use all the functionality of the Qwest NID if so desired, including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.
>
> 9.5.2.1.3 If a Qwest loop (drop) is being replaced by an CLEC loop (drop) CLEC may use the existing NID connection for the Qwest loop, including all of its capabilities. In such situation, the Qwest loop will be appropriately capped, tied off, or terminated to ground as desired by Qwest.

9.5.2.1.4 Where environmental conditions permit, either Party may remove the inside wire from the other Party's NID and connect that wire to that Party's own NID; or

9.5.2.1.5 Enter the subscriber access chamber or "side" of "dual chamber" NID enclosures for the purpose of extending a connecterized or spliced jumper wire from the inside wire through a suitable "punch-out" hole of such NID enclosures; or

9.5.2.1.6 Request Qwest to make other rearrangements to the inside wire terminations or terminal enclosure on a time and materials cost basis to be charged to the requesting Party (i.e., CLEC, its agent, the building owner or the subscriber). Such charges will be billed to the requesting Party.

Id. at p. 42.

56. Section 9.5.2.1 also describes circumstances in which Qwest will replace NIDs and ambiguously states that a CLEC will be assessed charges for this. AT&T 4-1 at p. 43. Qwest should explain in more detail its requirements for replacing the NID and the charges therefore. Id.

57. Section 9.5.2.2 states that Qwest will "retain sole ownership of the Qwest NID and its contents on Qwest's side." Id. at p. 43. This provision blatantly disregards the law on access to unbundled network elements and denies CLECs access to the full functions and capabilities of the element and should be eliminated. Id.

58. Section 9.5.2.2 also states that Qwest's shall not be responsible for multiple "NID change-outs." Id. at p. 43. Section 9.5.3.1 describes rate elements for these replacements. Id. Qwest should clarify these provisions relating to its "change-out" policy as discussed above in AT&T's comments on Section 9.5.2.1. Id.

59. Section 9.5.3.2 references rates for "single tenant NIDs," which are specified in Exhibit A. AT&T 4-1 at p. 43. Because other kinds of NIDs must be made available to CLECs, conforming changes should be made to this section of the SGAT. Id.

60. Finally, Section 9.5.4 states that stand-alone NIDs are ordered using the remarks section of the LSR form. AT&T 4-1 at p. 43. To accomplish the stand-alone NID order, the CLEC would have to specifically cancel the loop order in the remarks section as well. Id. However, because LSRs will automatically flowthrough, this procedure will result in the remarks section not being read prior to the LSR flowthrough. Id. Consequently, a loop order will be placed with every stand-alone NID that is ordered. Id. This procedure should be revised. Id.

e. Qwest Response

1. Line Splitting

61. Qwest witness Karen A. Stewart addressed several of the CLECs concerns on line splitting in her Second Supplemental Affidavit dated September 21, 2000. Ms. Stewart also addressed the comments filed by AT&T regarding line splitting in her *October 6, 2000 rebuttal affidavit.*

62. Regarding the question if CLECs can provision splitters on loops included in unbundled platform (UNE-P) combinations, Qwest stated that CLECs can provide voice and data over a single loop, even when that loop is also combined with Qwest provided unbundled local switching and shared transport. 5-Qwest-4 at p. 8.

63. With regard to the question of whether CLECs can provide any service (including line splitting) that it chooses when an unbundled loop is ordered from Qwest, Qwest clearly allows CLECs to provide telecommunications services that a particular element, such as unbundled loops, can support. 5-Qwest-4 at p. 9. Specifically, SGAT Section 9.1.5 states:

> CLEC may connect UNEs in any technically feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element that Qwest provides to itself. Qwest will not restrict the types of telecommunications services CLEC may offer through unbundled elements, nor will it restrict CLEC from combining elements with any technically compatible equipment CLEC owns. Qwest will provide CLEC with all of the functionalities of a particular element, so that CLEC can provide any telecommunications services that can be offered by means of the element. Qwest shall provide such unbundled network elements in a manner that allows CLEC to combine such elements in order to provide Telecommunications Service.

Id.

64. In response to CLEC concerns over whether a CLEC can order a UNE-P configuration and have Qwest leave the loop connected to an existing splitter, Qwest will convert an existing end user's POTS line to a UNE-P-POTS configuration, leaving the splitter in place, with the mutual consent of the owner of the POTS splitter. 5-Qwest-4 at p. 9. Qwest would remove its POTS splitter at the time the POTS line is converted to a UNE-P-POTS combination. Id. at p. 9-10.

65. Regarding AT&T's belief that it should be able to order a UNE-P configuration and have access to a Qwest owned splitter, Qwest strongly disagrees. 5-Qwest-4 at p. 10. Qwest stated that this exact request by AT&T was rejected by the FCC in the Texas 271 order. Id.

66. According to Qwest, AT&T admitted that Qwest does not have a 271 obligation to provide CLECs with access to POTS splitters. Qwest's October 6, 2000 Rebuttal Affidavit of Karen A. Stewart at p. 4. Qwest also disputes the AT&T assertion that adding a POTS splitter is analogous "in all relevant technical respects" to loop conditioning. Id. Additionally, Qwest states that AT&T attempts to cloud the issue by implying that only by requiring Qwest to own POTS splitters can a UNE-P CLEC avoid having to purchase collocation space. Id. at p. 6. Qwest has never stated or required that the voice CLEC is the only one who can own and install the POTS splitter. Id. Qwest stated that the voice CLEC (who is ordering the UNE-P) must tell Qwest how and where they want the unbundled loop portion routed in the office to reach a POTS splitter. Id. Qwest indicated that if this is unclear, it will modify its SGAT to clarify the issue. Id.

67. Regarding Qwest's business decision to not offer its retail Megabit product to its end users who select a different voice provider using a UNE-P configuration, Qwest stated that it clearly is under no obligation to provide its retail version of an xDSL service, i.e. Megabit, to CLECs that are using UNE-P arrangements. 5-Qwest-4 at p. 11. This is no way prevents a CLEC from providing a package of voice and xDSL service which it can provide by using line splitting to partner with an existing DLEC. Id. With Qwest's line splitting offering, end users will be able to obtain xDSL services from either the CLEC or another provider. Id. at p. 12.

68. Qwest disagrees with AT&T's statement that the only reason Qwest would not provide Megabit is to discourage its current customers from seeking a different voice provider. Qwest's October 6, 2000 Rebuttal Affidavit of Karen A. Stewart at p. 8. Qwest has made the business decision to not provide Megabit service for a variety of reasons. Id. As an example, Qwest stated that its provisioning, billing and maintenance procedures are based on Qwest having the underlying voice services, including the phone number which is used for most Megabit tracking, billing, loop qualification, and repair purposes. Id. Also, Qwest would potentially be required to negotiate contracts, to include terms, conditions, and billing and collection arrangements with an extremely large number of CLECs and has determined that it can best use its limited resources to meet the needs for its current voice customers prior to expanding its business to serve other CLECs' customers. Id.

69. Regarding AT&T's concerns on the loss and completion report process, current daily loss and completion reporting was developed using a manual process where the Qwest Interconnect Service Center sends the loss report to the CLECs via an electronic mail report. Qwest's October 6, 2000 Rebuttal Affidavit of Karen A. Stewart at p. 11. This manual process will continue until the end of the 1st quarter 2001, when system enhancements are available to transmit loss reports automatically to the CLECs. Id.

70. Regarding AT&T's concerns over items 3 and 3a in the transition scenario matrix, Qwest states that the matrix reflects the high-level work activities for each group (end user, Qwest, DLEC, etc.). Qwest's October 6, 2000 Rebuttal Affidavit of Karen A.

Stewart at p. 11. These particular processes cannot be categorized identically, because as the matrix reflects, the key driver is the entity with the LOA from the end user that controls the conversion. Id. Each CLEC's internal process steps would need to be similar to provide an identical customer experience to the end user customer, assuming that is what AT&T is defining as nondiscriminatory access. Id.

71. The Item 8 and 11 scenarios are currently being worked on by the joint CLEC/Qwest sub-team. Qwest's October 6, 2000 Rebuttal Affidavit of Karen A. Stewart at p. 11.

72. In its February 19, 2001 written response, Qwest addressed the one area not discussed in any other testimony to date – a sharing situation using unbundled loops. 5-Qwest-5 at p. 35. Currently, the FCC has not required the ILECs to provide line splitting using unbundled loops. Id. For 271 purposes, the FCC requires ILECs such as Qwest to make products available to meet current and reasonably foreseeable demand. Id. Given that there is no known demand, Qwest will not create a standardized product for line splitting using loops at this time. Id. However, if the CLEC and DLEC enter into a formal agreement between themselves to share a loop, Qwest will help to facilitate the effort even though it must be recognized that the sharing of the loop is between the CLEC and DLEC. Id.

2. NIDs

73. Qwest witness Jean M. Liston addressed several of the CLECs concerns regarding NIDs in her rebuttal Affidavit dated February 19, 2001.

74. Qwest, at the request of both AT&T and MCIW, agreed to totally revise SGAT Section 9.5 regarding the definition of the NID to better reflect the FCC UNE Remand definition of NIDs. 5-Qwest-5 at p. 28. It should be noted that this generalized definition takes into account the use of a wide variety of NIDs since the FCC recognized that it wanted flexible language in order to take into account the wide panoply of NIDs, such as "Smart" NIDs that are available. Id. at p. 29-30.

75. To address AT&T's concerns that Section 9.5 only addresses residential NIDs, Qwest stated that this section is intended to cover true demarcation points in single family residences, multiple dwelling units or any other customer point of demarcation. 5-Qwest-5 at p. 30. However, in high rise environments, the NID may not be a demarcation point, but instead a point of interface with Qwest owned facilities on either side. Id. In that situation, the NID is really an "accessible terminal" subject to sub-loop unbundling and is addressed in SGAT Section 9.3 Sub-Loop Unbundling. Id.

76. Qwest also added language to clarify that all carriers are required to follow the National Electric Safety Code and the National Electric Code. 5-Qwest-5 at p. 31. This was added to recognize the fact that all carriers must protect locations from foreign voltage. Id.

77. Qwest does not agree with AT&T's request for more specificity in Section 9.5.1 as it relates to NIDs. 5-Qwest-5 at p. 31. Qwest believes this is not necessary since an attempt to identify all types of possible NID connections would result in many changes to the SGAT every time technology changed. Id. Qwest agrees with the FCC that the definition it mandated is sufficiently flexible to cover all possible NIDs. Id.

78. Regarding numerous modifications to Section 9.5.2 by AT&T, Qwest agreed to some changes, modified some, and eliminated one of the recommended additional changes. 5-Qwest-5 at p. 32. Qwest removed the first sentence of Section 9.5.2.1 to meet the FCC UNE Remand Order. Id. Qwest also proposes changes to Sections 9.5.2.1 through 9.5.2.5 because Qwest believes these changes address legitimate concerns raised by AT&T and that the changes clarify the proposed access to NIDs. Id Qwest also stated that it provides unbundled access to the NID and allows competitors to connect their loops to a retail customer's inside wiring either via their own NID or the Qwest NID. Id. This conforms with federal regulations. Id. at p. 33.

79. Regarding Section 9.5.2.2, Qwest will retain ownership of the NID and its attached cable on the Qwest side of the demarcation point. 5-Qwest-5 at p. 33. The implication that AT&T makes that it is illegal for Qwest to retain ownership of its facilities is not true. Id. The FCC has not mandated that Qwest relinquish ownership of any of its cable and interface facilities that it allows a CLEC to use. Id. Qwest states that this is the reason unbundled loops are leased by a CLEC and not owned by a CLEC. Id.

80. Finally, SGAT section 9.5.3 also gives the CLEC the option to order a modular NID to replace an existing non-modular NID for ease in testing or to cooperate in reconfiguration necessary to create a Single Point of Interface. 5-Qwest-5 at p. 33. Also, Qwest does replace NIDs as a general policy. Id.

f. Disputed Issues

82. At the conclusion of the March 5, 2001 and May 14, 2001 workshops, the parties were unable to agree on a number of issues that went to impasse involving line splitting and NIDs. Statements of Positions on the impasse issues were filed by AT&T on June 15, 2001 and MCIW, Covad and Qwest on June 19, 2001.

1. Line Splitting Impasse Issues

DISPUTED ISSUE NO. 1: Whether Qwest provides line splitting on all types of loops and resold lines? (LS-1)

a. Summary of Qwest and CLEC Positions

83. AT&T argued that Qwest has asserted that its obligation to provide line splitting under the FCC's Orders is limited to UNE-P line splitting, citing to the FCC's *Line Sharing Reconsideration Order*. AT&T June 14, 2001 Brief at p. 36. In its Reconsideration Order, the FCC confirmed that line splitting must be made available on

UNE-P. Id. The FCC went on to confirm that the requirement to provide line sharing and line splitting applies to the entire loop. Id. Qwest's attempt to use terminology to limit its line splitting obligation by the terminology it uses to define its offerings cannot undermine its obligation to provide line splitting on all loops. Id.

84. AT&T went on to state that while Qwest has added new SGAT language to address line splitting with UNE loops, it has acknowledged that the actual provisioning of its offer will need to be worked through by the industry and Qwest has made not commitment as to a date by which it will actually allow CLECs to engage in line splitting on UNE loops. AT&T June 14, 2001 Brief at p. 36. The FCC has been clear that paper promises are insufficient to demonstrate compliance with Section 271 and has also made clear that the CLECs ability to engage in line splitting is part and parcel with the access the CLEC obtains when it leases a UNE. Id. at p. 36-37. CLECS are entitled to use the full features, functions and capabilities of the UNE, without limitations imposed by ILECs. Id. Thus, there is no reason to delay the availability of line splitting on UNE loops and Qwest's delay in doing so is an improper limitation on the use of the UNE loop by the CLEC. Id.

85. AT&T also stated that Qwest must make available line splitting on EELs and other combinations that utilize the loop as stated in the FCC's *Line Sharing Reconsideration Order*. AT&T June 14, 2001 Brief at p. 37. Qwest's refusal to allow CLECs to use the full functionality of the loop for purposes of line splitting is an improper limitation on the CLECs use of the loop. Id. at p. 38. Qwest should be required to permit line splitting on all loops and loop combinations. Id.

86. AT&T reports that Qwest has claimed that it will allow EEL splitting via the special request process ("SRP"). AT&T June 14, 2001 Brief at p. 38. Qwest concedes by its agreement to use the SRP that there is no issue regarding whether it is technically feasible to provide EEL splitting. Id. at p. 39. Qwest is simply refusing to make EEL splitting generally and readily available as a standard offering. Id. Qwest's assertions are flawed for the following reasons. Id. First, the SRP process is a time consuming process, with an undefined time-table. Id. Second, Qwest's justification for its refusal to create a product is flawed. Id. Qwest claims there has been no demand for EEL splitting. Id. At least one reason for this is that the FCC's line splitting obligation is new and CLECs/DLECs have simply not had sufficient opportunity to request all forms of line splitting, including EEL splitting. Id. In addition, absent an available product, there is no product for a CLEC/DLEC to request and the use of the SRP process just to determine if the line splitting can be provided will be a disincentive to CLECs/DLECs requesting EEL splitting. Id. Finally, nor can Qwest rely upon on any claim that there have been very few EELs ordered to justify its refusal to generally offer EELs. Id. Until recently, CLECs had to order EELs as private lines and there have been significant problems encountered in converting those private lines to EELs. Id. Thus, Qwest rationale does not provide a sound basis for Qwest's refusal to develop a standard offering for EEL splitting, particularly given the FCC's unambiguous requirement that Qwest must permit line splitting on all loops. Id.

87. There is no material difference between Qwest permitting line splitting on UNE-P, UNE Loops or EELs. AT&T June 14, 2001 Brief at p. 40. Splitting of the UNE loop and the EEL loop both involve splitting the line at the central office and should not require any different work by Qwest. Id.

88. AT&T recommends that Qwest must make line splitting available on all loops, including all loop combinations, as a standard offering, on an unlimited basis. AT&T June 14, 2001 Brief at p. 40. CLECs/DLECs must not be forced to use the time consuming SRP process to implement line splitting. Id. Accordingly Qwest should revise Section 9.21 of its SGAT to clearly set forth it obligation to provide line splitting on all loops and loop combinations. Id. The SGAT should be revised to clearly state that Qwest will offer EEL splitting as a standard offering and to state the terms and conditions of such an offering. Id. at p. 41.

89. MCIW stated that it concurred in the arguments set forth by AT&T in its brief addressing impasse issues. MCIW June 19, 2001 Brief at p. 1.

90. Covad stated that it concurred with the comments filed in AT&T's Brief on Loops, Line Splitting and NIDs. Covad June 19, 2001 Brief at p. 21.

91. Qwest argued that it has no obligation to provide loop splitting and is unaware of other ILECs that are currently providing loop splitting. Qwest June 19, 2001 Brief at p. 12. Qwest has agreed to develop a standard offering for loop splitting and has offered SGAT language, Section 9.24, to implement the offering. Id. Qwest stated that the impasse exists only with regard to EELs and resold lines. Id. Qwest will work with CLECs who request "EEL splitting" on a special request basis but will not offer line splitting over resold lines. Id.

92. Regarding EEL Splitting, Qwest stated that it is not truly possible to split an EEL because splitting would break the EEL loop and transport combination with insertion of collocation. Id. at p. 12. Both the voice and data streams would then be directed to the DLEC's collocation area. Id. The voice service would be routed to the IDF to connect to the transport UNE. Id. Thus, the voice portion is not an EEL combination of loop and transport; instead, it is loop and transport separated by collocated equipment. Id. Similarly, the data would be routed on a loop to the CLEC splitter and DSLAM, which may require a separate (unshared) transport UNE from Qwest for delivery to the ISP. Id. at p. 13. Thus, a split EEL would no longer be an EEL. Id.

93. Qwest has no obligation to provide EEL splitting. Qwest June 19, 2001 Br. At p. 13. Nonetheless, Qwest has agreed to provide EEL splitting on a special request basis. Id. Qwest will not, however, create a standard product offering for EEL splitting since it is only required to offer products where there is a current or "reasonably foreseeable" demand for such products. Id. Currently, there is no demand for EEL splitting. Id. Given the lack of demand, the significant investment of time and effort required to develop a standard product is not warranted. Id.

94. Regarding splitting resold lines, Qwest stated that it will not agree to offer line splitting over resold lines. Qwest June 19, 2001 Br. At p. 14. Qwest has no obligation to provide combinations of unbundled network elements with resale products. Id. The FCC requires ILECs to provide access to checklist items to only meet "reasonably foreseeable demand." Id. There is no evidence of any demand for splitting resold lines. Id. Any need for such a product could be satisfied with Qwest's existing offerings by simply converting the resale voice grade line to UNE-P voice, at which point UNE-P line splitting is available. Id. Because Qwest has no obligation to offer line splitting on resold lines and, in any event, Qwest already provides an equivalent offering, AT&T's request that the Commission impose a new obligation to provide line splitting on resold lines must be denied. Id. at p. 15.

b. <u>Discussion and Staff Recommendation</u>

95. This issue primarily revolves around line splitting on EELs and other loop combinations and whether the CLECs can obtain this from Qwest. The CLECs argue that the FCC's *Line Sharing Reconsideration Order* obligates Qwest to make available line splitting on EELs and other combinations that utilize the loop and that the SGAT should reflect this obligation.

96. Qwest has agreed to provide EEL splitting on a special request basis; however, will not create a standard product offering for EEL splitting since currently, there is no demand. Qwest will also offer line splitting over resold lines on a special request basis if demand arises.

97. Staff believes Qwest's approach is reasonable and should be adopted. Until such demand for line splitting over EELs or resold lines occurs, Qwest should not be forced to develop a standard offering for such products. CLECs can obtain line splitting over EELs or resold lines via the special request process. While AT&T requested that the SGAT be modified to reflect Qwest's obligation that it will offer EEL splitting as a standard offering, Staff believes this language should reflect Qwest's commitment to offer EEL splitting on a SRP basis. Therefore, Staff recommends Qwest modify its SGAT to include the following language:

> *"Qwest will provide line splitting of EEL Loops, other loop combinations and resold lines on a SRP basis. Qwest will develop a standard offering for line splitting of EEL Loops, other Loop combinations and resold lines when there is sufficient demand to allow Qwest enough experience to develop a standard product offering"*

DISPUTED ISSUE NO. 2: Whether Qwest is required to provide access to Qwest's POTS splitters? (LS-4)

a. Summary of Qwest and CLEC Positions

98. AT&T argued that Qwest should be required to provide access to outboard splitters that it places in its central offices and remote terminals and make them available on a line-at-a-time or shelf-at-a-time basis. AT&T June 14,2001 Brief at p. 41. There is no legitimate legal, technical or operational justification for Qwest's refusal. Id. Qwest should be required to modify its SGAT to state that, to the extent Qwest deploys in its network splitters that are not integrated with the DSLAM and are capable of being provided to DLECs on a line-at-a-time or a shelf-at-a-time basis, that Qwest will provide DLECs with access to such splitters. Id.

99. AT&T went on to state that Qwest relies on the SBC Texas 271 Order to support its position that even if it uses outboard splitters in its network, it will not commit to providing access to such splitters on any basis. AT&T June 14, 2001 Brief at p. 41-42. The FCC noted that it had not yet exercised its rulemaking authority to require ILECs to provide access to splitters, and therefore, it would not require SBC as a condition of obtaining Section 271 approval, to provide access to splitters. Id. The FCC specifically declined to comment on the requirement that an ILEC provide access to an ILEC-owned splitter on the grounds that it was considering this issue in response to AT&T's petition for reconsideration of the *UNE Remand Order.* Id. The FCC intends to address this ILEC obligation again in its reconsideration of the *UNE Remand Order.* Id. The FCC's decision to not impose a requirement on ILECs to provide access to ILEC-owned splitters in its review of the SBC Section 271 Application should not deter any state commission from imposing such a requirement on Qwest. Id. AT&T pointed out that this is exactly what the Texas PUC did by affirming an arbitrators' recommended decision which required Southwestern Bell to provide splitters on a line-at-a-time basis. Id. at p. 43. The decision further found (1) that "excluding the splitter from the definition of the loop would limit its functionality," (2) that "it is technically feasible for SWBT to furnish and install splitters to [enable CLECs to] gain access to the high frequency portion of the loop when purchased in combination with a switch port," and (3) that it is "inaccurate from a technical standpoint to analogize splitters to DSLAMs." Id. at p. 44.

100. Deployment of Qwest-owned splitters on a line-at-a-time basis will also serve to advance competition for DSL service and bundles of voice and data service, and as such, is very much in the public interest. AT&T June 14, 2001 Brief at p. 45. Access to Qwest owned splitters also yields benefits when a customer terminates individual services, allows for efficient usage of splitters and racks within central offices where space is already scarce, and promotes competition among data CLECs because voice providers and ISPs encounter fewer barriers to switching from one provider to another. Id. at p. 46.

101. AT&T recommends that Qwest be required to modify its SGAT to state that, to the extent Qwest deploys in its network splitters that are not integrated with the

DSLAM and such splitters are capable of being provided to DLECs on a line-at-a-time or a shelf-at-a-time basis, Qwest will provide DLECs with access to such splitters. AT&T June 14, 2001 Brief at p, 46.

102. MCIW argued that Qwest must provide POTS splitters and that the splitter must be located as close to the main distribution frame ("MDF") as possible. MCIW June 19, 2001 Brief At p. 7. MCIW stated that the Texas PUC concluded that ILECs must provide CLECs with POTs splitters as part of the loop UNE and that splitters must be located as close to the MDF as possible to avoid extending the total loop length beyond the level acceptable for line sharing and to provide data speeds at parity with data speeds enjoyed by the ILEC or the ILEC's data affiliate. Id.

103. MCIW stated that at present, UNE-P is the only vehicle most CLECs have to offer voice services to residential and small business customers on a scale that will provide meaningful competition to the ILECs. MCIW June 19, 2001 Brief at p. 8. CLEC's ability to compete in the mass markets will be severely constrained if they are unable to also provision data services in a timely and cost effectively manner. Id.

104. A Qwest furnished line splitter is the only way to allow access to the high frequency portion of the loop ("HFPL") to be delivered in a UNE-P architecture in a manner that is efficient, timely, and minimally disruptive to the retail customer. MCIW June 19, 2001 Brief at p. 8. Use of Qwest-owned splitters can eliminate unnecessary service lead times and can allow for more efficient use of resources and scarce central office and frame space, especially in the circumstance of an end user terminating service or migrating the xDSL service or voice service to another provider. Id. at p. 9. Failure by Qwest to deploy line splitters effectively destroys the utility of UNE-P as a viable means of competing for residential customers who want advanced services. Id.

105. MCIW requests that the Commission exercise its authority to require Qwest in this proceeding to provide access to Qwest-owned splitters on a line-at-a-time basis. MCIW June 19, 2001 Brief at p. 9. Qwest should not be permitted to offer only CLEC owned splitter deployment options. Id. at p. 10. MCIW also concurs with AT&T's position regarding the highly preferable use of a Qwest-deployed, line-at-a-time splitter arrangement. Id.

106. Covad stated that it concurred with the comments filed in AT&T's Brief on Loops, Line Splitting and NIDs. Covad June 19, 2001 Brief at p. 21.

107. Qwest argued that AT&T's demand must be rejected as a matter of law and fact in that the FCC has specifically held, not once but twice, that ILECs are not required to own and install splitters for CLECs on a line-at-a-time basis. Qwest June 19, 2001 Brief at p. 4-5. The FCC has rejected AT&T's argument in the Southwestern Bell Telephone Company 271 proceeding and in the *Line Sharing Order*, which held that ILECs have the option of providing line splitters themselves or, in the alternative, allowing CLECs to place their splitters in the ILEC's central offices. Id.

108. While AT&T argues that this Commission should order Qwest to provide access to Qwest's splitters because it would be convenient for CLECs and no different from an ILEC's obligation to condition loops, AT&T is incorrect. Id. at p. 5. Loop conditioning is significantly different from installing POTS splitters. Id. Owning, installing, inventorying and maintaining POTS splitters in a central office is significantly more burdensome and involved than adding or removing load coils in outside plant. Id. Moreover, while the FCC has ruled that ILECs must condition loops, the FCC has explicitly ruled that ILECs do *not* need to provide access to splitters. Id. at p. 6. Therefore, this Commission should refuse to require Qwest to purchase and own POTS splitters on behalf of CLECs. Id. at 8.

b. Discussion and Staff Recommendation

109. AT&T contends that Qwest should be required to provide access to outboard splitters that it places in its central offices and remote terminals and make them available on a line-at-a-time and shelf-at-a-time basis. AT&T also notes that when data CLECs share an ILEC owned splitter, switching a voice customer's data provider among such providers is much simpler and conserves valuable resources. While AT&T stated that the FCC has not yet exercised its rulemaking authority to require ILECs to provide access to splitters, it comments that this should in no way deter State commissions from imposing such a requirement on Qwest.

110. According to Qwest, the FCC has held (twice) that ILECs are not required to own and install splitters for CLECs on a line-at-a-time basis. Accordingly, the ACC Staff is reluctant to recommend that Qwest be required to provide access to splitters on a line-at-a-time basis without a finding by the FCC that it is technologically feasible. This issue is also similar to Emerging Services (Packet Switching) Impasse Issue #4. There the Staff recommended that the issue be revisited once the FCC has ruled. Until the FCC decides this issue, Staff believes Qwest should not have to provide access to its splitters on a line-at-a-time basis.

DISPUTED ISSUE NO. 3: Whether Qwest must offer its retail DSL service on a stand-alone basis when a CLEC provides the voice service over UNE-P? (LS-6)

a. Summary of Qwest and CLEC Positions

111. AT&T argued that Qwest's "policy" decision to disconnect Megabit service from a customer that decides to change to a CLEC for local voice service is nothing more than a retaliatory, anticompetitive act. AT&T June 14, 2001 Brief at p. 47. Qwest has decided to terminate Megabit service if a customer switches local carriers and by doing so, it has decided to walk away from a lucrative business on a loop that has already been conditioned for DSL and a customer that has already been provisioned and put into service. Id. The *only* reason for Qwest to make this policy decision is to discourage its current monopoly-based customers from switching their local service to a competing local exchange carrier. Id. This Qwest policy is a clear barrier to entry and is

anticompetitive. Id. Customers with Megabit will be reluctant to switch local providers, knowing that their Megabit service will be terminated. Id. Customers should have the option to maintain Megabit or to switch to an alternative DSL provider. Id. The choice of having Megabit should not be eliminated. Id.

112. The Commission should require Qwest to change this "policy" decision and provide consumers with a choice of whether they want to continue their DSL services with Qwest when they switch to the voice services of another carrier. AT&T June 14, 2001 Brief at p. 49. This ruling is necessary to level the playing field and encourage the development of competition in the advanced services market. Id. To hold otherwise would be to allow Qwest, the incumbent, to maintain its monopoly control over services available by virtue of the local loop. Id.

113. MCIW stated that it concurred in the arguments set forth by AT&T in its brief addressing impasse issues. MCIW June 19, 2001 Brief at p. 1.

114. Qwest argued that AT&T's contention fails as a matter of law. Qwest June 19, 2001 Brief at p. 8. The FCC, in its *Line Sharing Reconsideration Order*, confirmed that Qwest has no obligation to provide xDSL service when it is no longer the voice provider. Id. at p. 9.

115. A CLEC may provide DSL service to its voice customer or choose to resell Qwest's voice and DSL service to its voice customer, or the customer can obtain DSL service from another provider. Qwest June 19, 2001 Brief at p. 8. Thus, DSL services pose no barrier to CLEC as a matter of law. Id.

b. Discussion and Staff Recommendation

116. In its August 1, 2001 Final Report on Emerging Services, Staff agreed with AT&T that Qwest's policy decision was a barrier to entry and anticompetitive. Staff recommends that the same resolution as stated in the Emerging Services Report would apply here and is re-stated below.

117. Staff questioned and had concerns over Qwest's decision to withdraw Megabit service from customers where a CLEC uses line sharing to provide xDSL services across a loop's high frequency portion.

118. In particular, there were no technical feasibility issues identified in the record which would justify Qwest's position. In addition, there were no other compelling reasons offered by Qwest in the record to support its position other than that it is a matter of Qwest's policy on the issue and that Qwest does not believe it is required to provide DSL service when it is no longer the voice provider under current FCC rules and regulations.

119. Staff believes Qwest's policies, which it has failed to justify, would have an adverse impact upon competition in Arizona, by discouraging Megabit customers from

changing voice providers in a line sharing arrangement, since they would no longer be able to sign up with Qwest for DSL service if they did so. This policy of bundling the two services together would undoubtedly inhibit voice competition in the Arizona marketplace.

120. A State Commission, such as Arizona, has independent authority to ensure that the terms and conditions of Qwest's service offerings are not anti-competitive. Qwest must abide by such State conditions, as well as Federal conditions, in order to obtain Section 271 authority. Qwest should not be found in compliance with Section 271 requirements as long as it maintains its current policy of restricting its own Megabit or xDSL customers from taking service from another voice provider through line sharing. Therefore, Staff recommended that Qwest be required to revise its SGAT to permit its Megabit or DSL customers to change to a CLEC for local voice service through a line sharing arrangement.

121. AT&T and Qwest submitted comments on Staff's proposed resolution of this issue. Qwest stated that while it believes that it has no legal obligation to provide Megabit service in such circumstances, in the spirit of cooperation, Qwest has decided that it will not challenge the Staff's recommendation. Comments at p. 4. Qwest committed to enabling CLECs to provide their customers with Qwest's DSL service when a customer changes voice carriers to an UNE-P provider. Id. Qwest went to state that while the concern raised by the CLECs involved instances when Qwest was already the data provider, Qwest would also enable CLECs to provide Qwest's DSL service to new customers being served by a UNE-P provider. Id.

122. Qwest, however, sought clarification on one point, whether Qwest must provide DSL service irrespective of how the CLEC provides the voice service. Id. at p. 4. Qwest states that "Staff could not have meant to extend this obligation to customers served over stand-alone unbundled loops because that would cause Qwest substantial process and billing problems. Id. Qwest states that it cannot provide DSL for a CLEC end user customer when the CLEC service is provided by an unbundled loop arrangement because Qwest cannot identify or bill for the service when the telephone number does not reside in the Qwest systems. Id. Qwest seeks clarification that Staff only intended to apply this decision to situations where CLECs provide voice service to customers through UNE-P. Id.

123. Qwest states that there are some limitations in how it may offer the service. Id. Qwest must allow the CLEC to be the primary contact point for the end-user customer. Id. Qwest states that in order to do this, Qwest will provide its DSL service via resale, at the full retail rate. Qwest proposed the following to comply with the Staff's recommendation:

- Qwest will enable a CLEC to provide Qwest's DSL to an end-user customer via resale at 100% of the retail rate when service is provided by the CLEC to that end user over UNE-P.

- Qwest will enable this arrangement for both existing and new customers (e.g., a customer who had not previously subscribed to Qwest's DSL).

- In both instances identified above, Qwest will not have a direct relationship with the end user customer. Qwest will bill the CLEC and the CLEC will bill its end user customer for the DSL customer.

Qwest Comments at p. 5.

124. Staff believes that the clarification sought by Qwest at this time is reasonable and should be made. Thus, Qwest would not be required to provide DSL service over stand-alone unbundled loops at this time. The Staff encourages Qwest to address the process and billing problems it raises, so that this option is available to CLECs in the future. Qwest should be required to modify its SGAT to reflect this significant change in service obligations and provision. This is the same resolution approved by the Commission for Qwest's Line Sharing Offering in the Emerging Services Report.

125. AT&T commented that Qwest will necessarily modify its policy regarding the provisioning of xDSL services and develop a new "product offering" in order to satisfy the concerns expressed in the Staff Report. AT&T also stated that upon development of such product, Qwest should propose new contract language and afford the parties an opportunity to not only review it to confirm compliance with the Report's standards, but also to confirm that it is workable. AT&T Comments at p. 14.

126. Staff agrees that CLECs should have the opportunities cited by AT&T for review of the contract language. Staff also believes that Qwest's SGAT changes should be submitted for CLEC review.

DISPUTED ISSUE NO. 4: Should CLEC be able to assign billing responsibilities? (LS-14)

a. Summary of Qwest and CLEC Positions

127. AT&T argued that Qwest should be required to modify Sections 9.21.7.3 and 9.24.7.3 of its SGAT to fairly allocate liability for determination of customer of record. AT&T June 14, 2001 Brief at p. 49. Qwest, AT&T and other CLECs have agreed on a mechanism to permit an agent for a CLEC to interface with Qwest on line splitting and "loop splitting" matters. Id. Such a mechanism will allow cooperating CLECs to designate one point of contact for ordering unbundled loop facilities for both high frequency and low frequency applications. Id. The last sentence of Sections 9.21.7.3 and 9.24.7.3 as proposed by Qwest, requires a demonstration that the third person "wrongfully" used the security devices and that Qwest acted "willfully" or "negligently." Id. at p. 50. AT&T maintains that only a showing of Qwest's willfulness or negligence is appropriate and that AT&T need not demonstrate that the third party also

"wrongfully' used the security devices. Id. Accordingly, AT&T proposes that the word "wrongfully" be stricken from these sections. Id. To require the CLEC to demonstrate that the third party was also "wrongful" in its use of the security devices adds an additional burden to CLECs attempts to fairly assess liability for harm.

128. Qwest did not brief this issue.

b. Discussion and Staff Recommendation

129. Per the Arizona Issues List (AIL), LS-14 was closed during the workshops process. In addition, Staff sees no need for modification of this language, unless consensus was reached on modified language in other State workshops in which case Qwest would be obligated to import that language into its Arizona SGAT.

DISPUTED ISSUE NO. 5: Whether Qwest is obligated to provide line splitting over non-copper loops as well as copper loops? (LS-19)

a. Summary of Qwest and CLEC Positions

130. Qwest argued that the only technically feasible way to share a loop is over a clean copper loop. Qwest June 19, 2001 Brief at p. 15. The CLECs seek to require Qwest to "line split" over fiber. Id. This same issue was raised in the Emerging Services workshop when discussing line sharing and as Qwest described there, this is simply not technically feasible at this time. Id.

131. The FCC acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed. Id. at p. 16. The FCC initiated two further notices of proposed rulemaking seeking comments on the technical feasibility of "line sharing" over fiber fed loops. Id. However, the FCC has not imposed any additional obligations on ILECs. Id.

132. The CLECs' demand that Qwest delete a reference to copper loops in SGAT section 9.21.1, which describes Qwest's line splitting offering, and broaden the reference to include other loops, would expand Qwest's line splitting obligations and would create a false impression that CLECs can "line share" over any type of facility. Qwest June 19, 2001 Br. At p. 17. The loop splitting methodology described in Section 9.21 requires use of a Central Office Splitter. Id. This technically will not facilitate line sharing over fiber and thus, removing references to copper simply does not work. Id. The CLEC proposal would render the SGAT's description misleading because it is not technically feasible for Qwest to offer line sharing over anything other than a copper loop. Id.

133. Qwest is and has been proactively offering line sharing to CLECs throughout its region for over a year. Id. at p. 18. Qwest simply does not have a technical solution that will allow "line sharing" over fiber. Id. at p. 19. The FCC's

recent NPRM supports this view, as it seeks comments on whether line sharing over fiber is technically feasible. Id. It is illogical to assume that the FCC ordered ILECs to offer line sharing over fiber when the FCC is not even sure it can be done. Id.

134. No other parties filed comments on this impasse issue.

b. Discussion and Staff Recommendation

135. In its August 1, 2001 Final Report on Emerging Services, Staff addressed whether Qwest is required to provide line sharing over fiber. Staff recommends that the same resolution as stated in the Emerging Services Report would apply here and is re-stated below.

136. In its Proposed Findings of Fact and Conclusions of Law of the Emerging Services Report, Staff agreed with Qwest that it is complying with its current obligations. Staff believed that the additional language proposed by Qwest in SGAT section 9.4.1.1 adequately addressed line sharing over a fiber loop. The FCC is currently evaluating other methods and technologies of providing line sharing over fiber fed loops. Staff believed that the language proposed by Qwest in SGAT section 9.4.1.1 was expansive enough to address new methods and technological options of providing line sharing over fiber fed loops that ultimately are determined to be technically feasible by the FCC or this Commission.

137. In their comments filed on July 19, 2001, in response to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argued that Qwest's provision amounts to no more than a mere "paper promise" to afford access and that the record reflects that obtaining actual access from Qwest to any element entails an extensive resource and time-intensive productization process which in itself is a significant impediment to access and competition. Comments at p. 15. AT&T also argued that Qwest's SGAT Section 9.4.1.1 does not include any reference to "technical feasibility", and that merely technologies are identified. Comments at p. 15. AT&T argued that the section should be clear that the burden of demonstrating that a technology is not technically feasible should rest on Qwest. Comments at p. 16. AT&T also argues that the current SGAT language sets a higher standard than mere technical feasibility. Qwest's language requires that Qwest first deploy the technology in its own network.. This requirement, AT&T argues, would consign CLECs to merely keeping pace with Qwest. Id.

138. AT&T proposed the following language as an alternative to that proposed by Qwest:

> To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share in that manner, provided, however, that (i) the rates, terms and conditions for line sharing may need to be amended and (ii) if Qwest

demonstrates that such line sharing method is not technically feasible, Qwest need not afford the access identified.

139. Upon reconsideration, Staff agreed with AT&T that the language proposed by Qwest is overly restrictive. However, Staff believes that the language proposed by AT&T goes too far and would additional requirements on Qwest which far surpassed those contained in the 1996 Act. Therefore, Staff recommended that Section 9.4.1.1 be revised to state:

> To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share to the extent that Qwest is obligated by law to provide access to such technology. The burden shall be upon Qwest to demonstrate that such line sharing method is not technically feasible. For each additional line sharing technology and transport mechanism identified, Qwest will amend the rates, terms and conditions for line sharing as appropriate.

140. Staff believes that this language strikes an appropriate balance between that proposed by Qwest and AT&T, and that this same resolution should apply in this instance. This resolution in the Emerging Services Report was recently approved by the Commission.

2. NID Impasse Issues

DISPUTED ISSUE NO. 1: Whether CLECs are entitled to stand-alone access to the NID when Qwest owns the inside wire? (SGAT Section 9.5.1 and 9.5.2.1.1 - NID-1(b))

a. Summary of Qwest and CLEC Positions

141. AT&T argued that the law requires Qwest to offer the NID to CLECs in all instances. AT&T June 14, 2001 Brief at p. 57. AT&T seeks to ensure that all components of the NID—including all features and functions of the NID—are made available to CLECs. Id. at p. 58. While Qwest asserts that CLECs desire to obtain subloop for free, CLECs do not desire to circumvent the intent of the Act or the FCC rules. Id. Rather, CLECs maintain that all network components that constitute the NID—which, according to the FCC's definition is not merely limited to the terminal—must be offered to CLECs as a NID. Id. at p. 58-59. AT&T proposes that a fair and lawful rate be paid by CLECs for access to on premises wiring and assumes that the applicable cost cases will include all components of the NID when setting appropriate prices. Id. CLEC's are justifiably concerned that Qwest's attached charges in addition to those associated with access to the "NID" (as Qwest defines it) or, worse, denies access to components of the NID altogether. Id.

142. Qwest argued that AT&T can access NIDs that are attached to inside wire owned by Qwest through SGAT section 9.3, which governs subloop unbundling. Qwest

June 19, 2001 Br. At p. 21. Qwest also stated that AT&T is pressing the issue of stand-alone access to NIDs in the context of SGAT section 9.5 in the hopes of avoiding the application of the subloop access rules. Id. at p. 21-22. AT&T's contention has no merit as a matter of law. Id. When a CLEC orders access to inside wire owned by Qwest, it is requesting access to subloops. Id. The subloop it obtains includes the features and functionalities of that subloop which, in the case of inside wire, includes the features and functionalities of the NID. Id. It would be redundant to order inside wire subloop and a NID. Id. Moreover, stand-alone access to the NID where Qwest owns the inside wire would ignore Qwest's ownership of facilities beyond the NID, and Qwest's legitimate need to maintain records and procedures with respect to those facilities. Id.

143. The FCC plainly defined the unbundled NID as the demarcation point at which the customer premises facilities begin, regardless of the technology the NID employs or the design of a particular NID. Qwest June 19, 2001 Br. At p. 23. Qwest's NID provisions are in full compliance with the FCC's rulings on this issue and Qwest's SGAT definition of NID incorporates much of the FCC's language verbatim. Id. This definition includes terminals that are not Demarcation Points. Id. at 24.

144. Qwest also argued against AT&T's request to have Qwest revise the SGAT to completely separate the NID from subloop, so that AT&T would order a NID in addition to the attached subloop. Qwest June 19, 2001 Br. At p. 24. AT&T's position directly contradicts the FCC's mandate that the functionality of the NID is included as part of a subloop. Id. AT&T's attempt to obtain stand-alone access to NIDs connected to Qwest's inside wire must be rejected as a matter of law. Id. at p. 25.

b. <u>Discussion and Staff Recommendation</u>

145. The FCC's *UNE Remand Order* (para. 235) provides as follows:

> "We decline to adopt parties' proposals to include the NID in the definition of the loop. Similarly, we reject arguments that we should include inside wiring in the definition of the NID in order to permit facilities-based competitors access to inside wiring. Although competitors may choose to access the inside wire via the NID, in some circumstances they may choose to access the inside wire at another point, such as the minimum point of entry. By continuing to identify the NID as an independent unbundled network element, we underscore the need for the competitive LEC to have flexibility in choosing where best to access the loop. Competitors purchasing a subloop at the NID, however, will acquire the functionality of the NID for the subloop portion they purchase. We therefore find no need to include inside wiring in the definition of the NID, or to include the NID as part of any subloop element."

The FCC was clear in its UNE Remand Order that the CLEC is to have access to Qwest's NIDs. The NID is considered to be a an independent unbundled network element, allowing the CLEC to have maximum flexibility in choosing where to access the loop. Qwest's SGAT appears to incorporate an expansive definition of the NID similar to the FCC requirements. AT&T indicated that Qwest's SGAT Section 9.5 was acceptable and reiterated its concern that Qwest's NID definition be as expansive as the FCC's definition. Qwest has stated that its NID definition in the SGAT incorporates much of the FCC's language verbatim in Section 9.5.1.

146. The second question raised is whether all NIDs ordered in conjunction with subloops are subject to the terms and conditions of SGAT Section 9.3, Qwest's collocation provisions. Staff believes that Qwest should be required to modify Section 9.5 to remove language that all NIDs ordered in conjunction with subloops are subject to the terms and conditions of SGAT section 9.3. Staff believes that this language is overly broad and does not comport with FCC requirements.

DISPUTED ISSUE NO. 2: Whether CLECs may remove Qwest's wires from the protector field of the NID? (SGAT section 9.5.2.1 and 9.5.2.5 – NID-4)

a. Summary of Qwest and CLEC Positions

147. AT&T argued that CLECs may request Qwest to remove its connections from the protector field at a NID to free capacity on the NID so that the CLEC can provide service to the customer. AT&T June 14, 2001 Brief at p. 59. Failure to free such capacity may make the NID, or connections within the NID, inaccessible to the CLEC. Id. Although Qwest refuses to modify its SGAT to require it to remove its connections from the protectors by relying on excerpts from the National Electrical Safety Code, Section 315A of the code addresses the need for protection where "communications apparatus is handled by other than qualified persons". Id. at p. 60. The situations AT&T are referencing are those in which a company technician that is qualified is capping off loop facilities. Id.

148. AT&T proposes resolving this issue by modifying the sentence, at the end of Section 9.5.2.1 as follows "At no time should either Party remove the other Party's loop facilities from the other Party's NID without appropriately capping off the other Party's loop facilities." AT&T June 14, 2001 Brief at p. 61.

149. Qwest argued that CLECs should not be permitted to remove Qwest's wires from the NID. Qwest June 19, 2001 Brief at p. 29. The NID provides protection against voltage surges caused by lightning and inadvertent contact between commercial power cable and telephone cable. Id. at p. 28. Removing Qwest's distribution facilities from the protector field of the NID would violate electrical safety codes, which require surge protectors or over voltage protectors on communications conductors. Id. at p. 28-29. The removal of the ground protection creates a potential fire hazard that could impact the network, the building and individuals in the building. Id. Qwest strongly urges the

Commission to reject AT&T's request and rather abide by the national electric safety codes that require voltage protectors on all telecommunications facilities. Id.

b. Discussion and Staff Recommendation

150. AT&T's proposal would involve modifying Section 9.5.2.1 as follows: "At no time should either Party remove the other Party's loop facilities from the other Party's NID without appropriately capping off the other Party's loop facilities." AT&T Brief at p. 61. Qwest, on the other hand, argued that this proposal by AT&T was based on a 1969 Bell System practice that would leave Qwest's distribution facility unprotected and in violation of the National Electric Safety Code and the National Electric Code.

151. Staff does not believe that Qwest has demonstrated that such capping off of another Party's loop facilities would be inappropriate if done by a qualified technician. Section 315A of the Code addresses the situation where "communications apparatus is handled by other than qualified persons." (See National Electrical Safety Code, para. 315A (1997 Edition)). If a CLEC technician is properly trained and qualified to remove Qwest's distribution facilities from the NID, and cap them to protect Qwest's facilities from excessive voltage and the CLEC technician follows standard industry practice, there appears to be no reason to prohibit this activity.

152. However, Staff believes that the language proposed by AT&T does not go far enough. Staff recommends the following language in lieu of that proposed by AT&T:

> "At no time should any Carrier remove another Carrier's loop facilities from that Carrier's NID without appropriately capping off the other Party's loop facilities. Only qualified technicians (of the carrier selected by the customer) who are certified to perform work under the National Electrical Safety Code and under other applicable industry standards, will be permitted to cap off loop facilities in accordance with standard industry practice.

DISPUTED ISSUE NO. 3: Whether Qwest retains ownership of the cross-connect blocks and cross connects of a NID? (SGAT section 9.5.2.2 – NID-7)

a. Summary of Qwest and CLEC Positions

152. Qwest argued that AT&T again seeks to avoid having to comply with Qwest's protocols for access to the NID and subloops. Qwest June 19. 2001 Brief at p. 27. Qwest retains ownership of its facilities even though a CLEC may lease a UNE from Qwest or obtain access to inside wire at a Qwest NID. Id. Qwest owns the entire NID, including the block, the cross-connections, and the bridge clip, and the customer or building owner's ownership begins only at the inside wire. Id. The only exception to Qwest's ownership is in limited cases where a builder has installed its own blocks. Id.

Even in such limited cases, Qwest owns the cross connects. Id. The Commission should reject AT&T's attempt to divest Qwest of ownership of its facilities. Id.

153. No other parties briefed this impasse issue.

b. Discussion and Staff Recommendation

154. No other parties briefed this impasse issue. Further, it is not clear why NIDS should be treated differently than other UNEs by requiring Qwest to transfer ownership in this limited instance. Staff accepts Qwest's position on this issue.

DISPUTED ISSUE NO. 4: Whether a CLEC may gain access to MTE inside wire through Qwest's protector field when no other access is available and when the CLEC has provided its own protector, without paying Qwest for the NID? (SGAT section 9.5.2.5 – NID-9)

a. Summary of Qwest and CLEC Positions

155. AT&T argued that Qwest has installed the NID in such a way that access is not possible to the inside wire, except via the protector field. AT&T June 14, 2001 Brief at p. 62. For example, the NID may be hermetically sealed, the lead on the inside wire is too short to access from the CLEC NID or Qwest has installed the NID in such a way that it has made it impossible or very difficult to access customer's inside wire. Id.

156. AT&T also stated that Qwest's objection to AT&T's request lacks legal basis. AT&T June 14, 2001 Brief at p. 62. In fact, the FCC's rulings on the NID have largely been designed to ensure that the CLEC has access to the customer, including the inside wire of the customer. Id. Moreover, it makes little sense to force CLECs to pay for such access when Qwest is not charging for access to other functionalities of the NID. Id. In this circumstance, the CLEC has no interest in the protector's functionalities, since they would be using the protector in their own NID, but it has no other viable means of access to the customer. Id. As a result, access to the protector of field of Qwest's NID is a cost the CLEC would be forced to bear even though the CLEC is unable to avoid such costs. Id. Therefore, it is improper to charge CLECs for access to the protector field under these circumstances. Id.

157. AT&T proposed that this issue be resolved by including in Section 9.5.2.5 of the SGAT the following statement after the first sentence:

> *"No charge for this functionality shall apply to a CLEC that supplies its own electrical protection for its facilities."*

158. Qwest argued that if a CLEC connects on the protector side of the wire, it is accessing a customer through Qwest's NID. Qwest June 19, 2001 Brief at p. 27.

CLECs should not be permitted to use Qwest's facilities without paying for them. Id. at p. 27-28. The CLEC is essentially leasing the Qwest equipment and therefore Qwest is entitled to reimbursement. Id. at p. 28. There is no support for the proposition that Qwest should provide access on its side of the NID, but then not receive payment for the CLEC's presence on and through Qwest's facilities. Id.

b. Discussion and Staff Recommendation

159. AT&T claims that in some cases the only feasible or convenient access to a NID is through or in association with a protector field and cites the *UNE Remand Order* as its basis for requiring Qwest to provide this access. AT&T also believes that it makes little sense to force CLECs to pay for such access when Qwest is not charging for access to other fuctionalities of the NID. Qwest counters this by stating that if CLECs connect on the protector side of the wire, it is accessing a customer through Qwest's NID and therefore, Qwest is entitled to reimbursement.

160. Staff concurs with Qwest that there is no support for not being compensated if Qwest provides access on its side of the NID. Any access on the protector side of the wire would result in access to Qwest's NID and therefore, compensation paid to Qwest for such access.

DISPUTED ISSUE NO. 5: Whether CLECs should have access to a NID cross-connection field other than the protector side or the on-premises wiring side, without complying with subloop procedures? (SGAT 9.5.4.2 – NID-10)

a. Summary of Qwest and CLEC Positions

161. AT&T argued that Qwest's proposed limitation on access to the NID is contrary to the *UNE Remand Order*. AT&T June 14, 2001 Brief at p. 64. The FCC intended its definition to be very broad. Id. This definition, applied broadly, unequivocally encompasses all cross-connect panels in the NID. Id. There is absolutely no attempt by the FCC to limit the CLECs access to the protector field and the inside wire panel of the NID. Id. Access to these cross-connect panels could be critical to the CLEC gaining access to the customer, as contemplated by the FCC. Id. Qwest should be required to give CLECs full access to the NID, including the various cross-connect panels of the NID, as is required in the UNE Remand Order. Id.

162. Qwest argued that by casting this dispute as a NID issue, AT&T seeks to gain such access without being subject to the procedures or costs associated with access to subloops. Qwest June 19, 2001 Br. At p. 26. Access to cross-connection fields within a NID under such terms is not appropriate. Id. If a CLEC is unable or does not wish to access the on-premises wiring side of a NID, it may submit an LSR to Qwest, access the protector side of the NID, and perform its own wiring to make the connection. Id. In an MTE situation, Qwest must first determine if the MTE NID requested by the CLEC is a Demarcation Point. Id. If the NID is also the Demarcation Point, then the CLEC must submit an LSR to access the protector field of the NID. Id. Then the CLEC can directly

wire its facilities on the protector field of the NID. Id. However, if the MTE is not the Demarcation Point, then the CLEC must comply with Section 9.3 of the SGAT, Subloops. Id. The FCC has clearly stated that in some situations, access to a subloop will be via a NID and as such, the Commission should reject AT&T's request. Id.

b. Discussion and Staff Recommendation

163. AT&T relies the *UNE Remand Order*, paragraph 233, to support its position. Paragraph 233 states:

> In the *Local Competition First Report and Order*, the Commission defined the NID as a cross-connect device used to connect loop facilities to inside wiring. We modify that definition of the NID to include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism. Specifically, we define the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.

164. Staff believes the FCC's UNE Remand Order is clear that Qwest must provide access to all of the NID's features, functions, and capabilities. Qwest should revise its SGAT to ensure that the definition of the NID includes all of its features, functions and capabilities.

h. Verification of Compliance

165. With Staff's recommendations resolving all impasse issues as described above, all other outstanding issues raised in the Workshops in Arizona were resolved and the issues of Line Splitting and NIDs are no longer in dispute in Arizona.

166. Qwest has agreed to allow all CLECs to opt into the provisions of its SGAT resulting from the 271 workshops.

167. Qwest has agreed to import all agreements reached in other State Workshops into its Arizona SGAT.

168. With implementation of the impasse resolutions discussed above and modification of its SGAT to reflect same, Qwest complies with all applicable line splitting and NID requirements.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. As a result of the proceedings and record herein, Qwest has demonstrated that it complies with all applicable line splitting and NID requirements for 271 purposes.

8. Qwest complies with the requirements of Line Splitting and NIDs, subject to it updating its SGAT with language agreed to in other region Workshops and subject to its updating its SGAT with language reflective of the impasse resolutions contained herein.

9. Qwest's compliance with Line Splitting and NIDs is also contingent on its passing of any relevant performance measurements in the third-party OSS test now underway in Arizona.